OCA comments

The Office of Consumer Affairs (OCA) regularly analyzes proposed Federal regulations and issues comments and opinions to the issuing agencies whenever proposed regulations would seem to have a significant impact on consumers. Below is a summary of a recent comment prepared by OCA which should be of particular interest to consumers. Copies of this comment may be obtained free from the Office of Consumer Affairs, Room 621 Reporters Bldg., Washington, DC 20201.

PUBLIC PARTICIPATION

OCA has filed a written comment with the Civil Aeronautics Board (CAB) taking issue with Chamber of Commerce of the USA's position that a proposed CAB program to reimburse participants in CAB proceedings is illegal.

CAB is currently considering setting up a reimbursement program that would provide funds to groups and individuals who could add significantly to CAB proceedings but who would be unable to do so without Federal financial assistance. [See CONSUMER REGISTER May 1.]

The Chamber of Commerce in a comment to the CAB told the Board that such a reimbursement program would be illegal based on the outcomes of 2 recent court cases: Greene County Planning Board v. Federal Power Commission (FPC) and Alyeska Pipeline Service Co. v. Wilderness Society.

Reiterating its position in an earlier letter to the Chamber, OCA commented that these decisions have no bearing on the CAB case because of their limited scope which precludes application to the CAB. OCA also cited US Supreme Court decisions dating back to 1835 in saying that laws authorizing Federal agencies to operate are "often broad enough to encompass a wide range of agency activities." OCA said this could include the establishment of reimbursement programs.

OCA concluded that CAB has the authority to run such a program based on the wording of the Federal Aviation Act which states that the CAB may use its funds "as may be necessary for the exercise and performance of the powers and duties vested in and imposed upon the Board by law."

Gotcha!

That's how a reader told us we incorrectly identified the author of Aerobics and The New Aerobics in CONSUMER NEWS' article "Fitness, caution and feet" which appeared in the May 15 issue. The name is Dr. Kenneth Cooper (not Crawford, as reported).

consumer news

DEPARTMENT OF HEALTH, EDUCATION & WELFARE Office of Consumer Affairs

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Consumer hazards ranked

The Consumer Product Safety Commission (CPSC) has released its 1977 Consumer Product Hazard Index which ranks product-related injuries and hazards that occurred in the US last year. The index, which is based on reports from 119 hospital emergency rooms, ranks products in order of accident frequency and severity.

The data are compiled by the National Electronic Injury Surveillance System (NEISS). Surveillance data from the sample hospitals are recorded by computer daily and tabulated to show which products are associated with injuries. Investigatory data from chosen cases are obtained to show how the product was involved and the course of events which resulted in injury.

Severity is evaluated in terms of injury diagnosis, body part affected, and whether hospitalization was required.

Before ranking the product categories, CPSC weighted the age factor to provide special consideration for the young due to the nature of the risks incurred by this group. Weights were also assigned to hospitals so that accurate national projections of injury frequency could be made.

The most dangerous 10 products in CPSC's 1977 Hazard Index listed in decreasing order of injury frequency and severity are:

- 1) Bicycles and bicycle equipment (including add-on features).
- 2) Stairs (including folding stairs), steps, ramps, landings.
- 3) Football, related equipment and apparel.
- 4) Baseball, related equipment and apparel.
- 5) Swings, slides, seesaws and playground equipment.
- 6) Power lawnmowers and unspecified lawnmowers.
- 7) Skates, skateboards and scooters.
- 8) Swimming, swimming pools and related equipment.
- 9) Non-glass tables and unspecified tables.
- 10) Beds (including springs, frames, bunk beds and unspecified beds).

Consumer problems and the elderly

For persons over 65 years of age, past and present consumer education efforts may not be effective. That conclusion was reached by the University of Pittsburgh, after obtaining information through the first of 2 nationwide mail questionnaires. The university staff of the Elderly Consumer Project found that older consumers tend to perceive fewer marketing practices as "unfair," especially those practices which could lead to consumer problems. The Project is funded by the **Administration on Aging**. (AoA).

The survey researched both young and old consumers and questioned their perceptions of marketing practices, complaint actions arising from buying problems, factors inhibiting complaint actions, and the psychological costs associated with buying and complaint behavior.

Initially, the research examined consumer behavior by presenting 3 sets of marketing practices in a structured questionnaire. These questions included mention of practices relevant to the consumer before purchase, at the (Continued on page 2)

Energy-saving tip clarified

In response to an Energy Dept. list of energy-saving tips published in the Jan. 15 issue of CONSUMER News, several readers wrote to us expressing concern about Energy's suggestion to let leftover foods cool before putting them in the refrigerator—thus saving energy.

The people who wrote to us, including a registered sanitarian, the Executive Director of Consumers Union and a concerned consumer—all said the advice was questionable because slow cooling of foods increases the risk of food poisoning, and they urged us to warn our readers about the dangers.

As a result of Consumer News' queries to Energy Dept. and Food and Drug Administration (FDA) about reconciling the need for conserving energy—and no one denies that hot foods do indeed make refrigerators work harder—with food safety, experts in the Energy Dept. and FDA's Microbiology Division say they have reached a reasonable compromise.

FDA has always said that food should be refrigerated as soon as possible (but a boiling pot of soup does not have to be popped into the refrigerator immediately). However, by the time a meal is served, anything left over has usually cooled to a point where it can be refrigerated without putting too much of a burden on the modern refrigerator. The problem, FDA says, is that people tend to forget the food and let it cool too long, which can result in foodborne illness. FDA's advice is to put leftovers in the refrigerator as soon as you finish your meal and to refrigerate other foods before they fall to 140 degrees. (At this temperature the container is hot, but not too hot to touch.)

Recall

• MAYONNAISE—Food and Drug Administration (FDA) announces recall of 4,000 cases of Kraft Real Mayonnaise with Pure Lemon Juice distributed to more than 4,000 stores in Alabama, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina and Virginia. The mayonnaise may contain dead insects, but FDA said no serious health hazard was posed. Jars are identified by the following codes: OCT-3-78 A-1, OCT-12-78 A-1 and OCT-13-78 A-1.

Elderly (continued from page 1)

time of purchase, and those especially relevant after a purchase is made.

The Consumer Project team says that the information gathered through the surveys shows that the elderly, when unsatisfied, are less inclined to take any action than consumers under the age of 65.

The Elderly Consumer Project suggests that additional channels making it easier for older consumers to resolve complaints are needed. In particular such channels should be designed to reduce the psychological costs associated with their use. Such costs, their data suggest, may be inhibiting complaints by those over 65 and lowering their opportunities for resolution.

Future analyses from the Elderly Consumer Project will further examine the mail surveys as well as information gathered through consumer and vendor interviews now being conducted by the staff.

OCA critiques regulatory cost study

The Office of Consumer Affairs (OCA) has identified several problems with the procedures for a proposed large-scale Business Roundtable study on the cost of Federal regulation.

The Business Roundtable, a group composed of the chief executive officers of 187 of the nation's largest businesses, has contracted with Arthur Andersen & Co., one of the largest accounting firms in the US, to conduct the nationwide project. OCA has shared its criticisms with the Andersen firm.

The OCA review found that the proposed study would not consider measurement of the benefits derived from Government regulations in comparison to their costs, which, Lee Richardson, Acting Director of the **Office of Consumer Affairs** (OCA), said, is akin "to measuring the pain of a hypodermic needle without considering the value of the injected penicillin."

Another basic problem found with the proposal is the assumption that all costs incurred in response to Government regulation are actually required by regulation and can be objectively defined and measured. The review referred to a situation in which a firm might report as a cost of compliance, expenses related to an appeal of an order from a regulatory agency. Also, Dr. Richardson said that measurement of the cost of compliance cannot, under current accounting practices, differentiate between efficient compliance and wasteful compliance efforts by firms.

As a practical matter, the OCA review questioned whether the study can be completed by a company task force of 15 persons working 4 months, as suggested. Could, for instance, such a group, within the time allotted, manage an effective study of a giant corporation like AT&T?

Additionally, the OCA analysis points out that measurement of cost of compliance by the Roundtable's methods is limited to its 187 members, excluding other elements in the economy which also incur costs of compliance, such as labor, medium and small businesses, and consumers.

Finally, the review says that the proposed study's accounting procedures include a "loophole" which appears to be an "intolerable abandonment of accounting standards." The study could, for example, allow the inclusion of costs which are actually undefined estimates of compliance costs furnished by company personnel.

The OCA report asserts that if this methodology is used, the study's value in public policymaking will be severely limited and, noting that regulatory reform will be difficult enough without purposeful manipulation of data, recommends that: (1) the limitations on the study's value be prominently disclosed in the final study; (2) the Business Roundtable present a specific methodology for review rather than general concepts; (3) that data provided by the companies in the study be audited and verified; and (4) the Roundtable incorporate more public input and participation in the development of study methods.

Truth-in-menu

A new area of consumer concern is "truth-in-menu," or menu fraud—defined as describing a specific item or quantity of food, attaching a price appropriate to the description, and serving something of lesser quality or quantity.

This recent interest in menu misrepresentation stems, in part, from a study by Robert Hills, a communications consultant in the Washington, DC area, who was commissioned by Emersons, Ltd., a restaurant chain, to study menu fraud. Purpose of the study was to define the problem, to identify what has been done and to develop a guide to help consumers guard against fraud.

Truth-in-Menu: A Report on Consumer Fraud through Menu Misrepresentation is the result of the study, and it discusses 2 geographic areas—Washington, DC and Los Angeles County, CA, that have actively been concerned with the area of menu fraud.

A 2-month survey of 141 Washington, DC restaurants by Joseph Nuzzi of the District of Columbia **Environmental Health Administration** found 5 major areas of violation:

- Delivery of a size or quantity of a product was less than advertised.
- Serving of commercially processed and previously frozen products instead of fresh products.
- Substitution of domestic products for those labeled "imported" on the menu.
 - Delivery of meat of a lower quality than that stated on the menu.
- Listing a particular cut of meat or a specific product on the menu and serving another cut or product in its place.

Specifically, according to the report, the Washington survey found that 100% of the shrimp advertised on the surveyed menus as "fresh" had been frozen. Also, other products advertised as "fresh" were actually frozen. More than 70% of the fruit mixtures, such as salads, fruit cups or cocktails advertised as "fresh" contained some commercially packed and preserved product as an ingredient. Over half of the surveyed restaurants misrepresented their ground or chopped beef products on the menu as of higher quality or greater freshness than that of the product served. More than 75% of the restaurants served "baked ham" that was not baked, about 50% of the restaurants advertised "kosher" foods that were not kosher, and over 75% of the restaurants substituted domestic blue cheese for the advertised "Roquefort" cheese.

Findings in Los Angeles County, one of the few areas to have a statute prohibiting menu fraud, are similar to the Washington survey. There the Office of Environmental Management enforces the statute. In a complaint against one restaurant it was found that its "Hawaiian pineapple" did not come from Hawaii, its "chicken salad" did not contain chicken, and its "sugar covered ham steak" was pork shoulder. The report states that California strictly enforces the statute, and cash fines and probationary status are regularly given to violators of the law.

At present menu misrepresentation has received little attention from government. The booklet states that with the exception of Los Angeles County, Washington, DC and a few other isolated jurisdictions, few local governments appear to have taken an interest in truth-in-menu. The booklet claims a lack of consumer protection activity on the part of states and local governments, and almost total inaction on the part of the restaurant industry.

Copies of the booklet may be obtained by sending 50¢ to Emersons, Ltd., 11790 Parklawn Drive, Rockville, MD 20852. Questions on the issue of truth-in-menu may be directed to Mr. Robert Hills, 4750 Chevy Chase Drive, Chevy Chase, MD 20015; telephone 301-654-9215.

Warning again! Baseball pitching machines

Consumer Product Safety Commission, (CPSC) has announced a settlement in the case against the manufacturers and distributors of Dudley or Commercial Mechanisms, Inc. guardless automatic baseball pitching machines. In 1977 CPSC warned buyers and users of certain automatic baseball pitching machines of the potential for severe bodily injury which the machines present [CONSUMER NEWS Aug. 1, 1977]. At that time CPSC had 2 reports of permanent and severe brain damage resulting from the machines, along with 18 other injuries including brain concussions, severe lacerations and severe facial disfiguration. Since then even more accidents were reported.

The problem with the machines has been that the machine's revolving pitching arm has no guard and retains sufficient energy to "pitch" even though the machines are unplugged or disconnected. The machines have been set off by slight vibration. The pitching arm may also separate from the machine during operation causing the ball to be "pitched." The machines may also fire pitches erratically in unintended directions. All of these problems can be solved with a guard placed on the machines.

In the settlement, manufacturers and distributors of the machines have agreed to provide a guard for the machine free of charge to all owners, with the exception of certain machines used in commercial batting ranges and machines which already have guards. The guard is an expanded metal screen which fits over the machine like a cage. Instructions for installation will be provided with the guards.

Between 1956 and 1975 approximately 7,500 of the baseball pitching machines were manufactured and distributed. Most of the machines were sold for use by schools and Little League teams. "Olympia," "Olympie," "Champ," "Blazer," "Super Blazer," "Pro-Blazer," "Range Blazer," "Master," "Mentor," "Pro-Trainer," and "Professional" are the various brand names under which the machines were sold.

To obtain a guard, owners of the Dudley or Commercial Mechanisms pitching machines should call the CPSC Hotline 800-638-2666 (Maryland residents only 800-492-2937) or write CPSC in Washington, DC 20207. The following information will be required: name, address, phone number, model type, whether the machine has a guard, and whether the machine is used in a commercial batting range. It will take 6 or more weeks to receive the guard.

Gas valves

Consumer Product Safety Commission (CPSC) warns that certain manually operated gas valves, imported since 1976, may leak, causing fire or explosions in households.

The suspect gas valves are used to shut off the gas supply to gas appliances and have reportedly been involved in 2 fires and 15 gas leaks in Sacramento County, CA. Hundreds of thousands of these defective valves, all manufactured in Taiwan, are believed to have been imported and distributed nationwide by a small number of firms since early 1976. According to CPSC the valves can be identified by the number "34" or "1/2" stamped on the side of the unit and the word "Taiwan" on the unit's washer. However, CPSC cautions that gas valves manufactured in Taiwan by other companies could carry similar identification.

If you live in a house built or remodeled since early 1976 which uses gas appliances, or in a home where new gas appliances have been installed, check your gas lines to see if one of the defective valves has been installed. If you are not sure where to look for the valves, contact your builder, gas appliance installer or local gas company for help. Call your local gas company if you suspect one of the defective valves is in your house or if you smell gas.

Anyone aware of a fire or gas leak stemming from a defective valve should report the incident to CPSC's toll-free hotline by calling 800-638-2666; in Maryland only, call 800-492-2937.

Government surplus bargains?

In addition to many other functions, **General Services Administration**, (GSA), the "business manager" of the Federal Government, sells government surplus equipment including old typewriters, old furniture—and old cars.

But many other items, such as office supplies (pens, pencils, paper, light bulbs) are not sold as surplus but are passed on to other government agencies.

GSA is now warning individuals and businesses that some sellers claim to be government agents offering to sell government surplus office supplies at a discount price. And although these vendors usually deliver the supplies you order, they are not necessarily sold at a bargain price but are sometimes higher than regular office suppliers.

For example, a museum director in Texas reported to **Health, Education and Welfare Dept.** (HEW) that he was approached by someone who said he was an accountant in the "Office of Small Business Commission" in Washington. The "accountant" said he was selling case lots of surplus light bulbs from a now-defunct HEW project. He offered a discount and said "a contractor would establish contact" with him and then gave some excuse for not giving the museum director a return phone number. When the contractor's representative called he said he thought the accountant worked for a commercial firm and not the government. The museum director decided not to do business with the organization.

Office of Consumer Affairs (OCA) has received several other inquiries about telephone solicitations from persons alleging to be government agents using organization names that have a government "sound" to them.

Because of such incidents, GSA has the following advice for persons who receive such solicitations:

- Tell the caller you ne**ed** time to decide, then ask for a number to call back. In many cases you will not be given one.
 - See if you can get the name and address of the caller, and ask where he or she got your
 - · Hang up if the caller tries to pressure or threaten you.
- Check with your nearest GSA Federal Information Center if the caller claims to be a GSA employee. It is listed under "US Government" in the telephone directory white pages.

In addition, if you want to learn about the types of products GSA does sell as surplus, a free copy of Buying Government Surplus Personal Property may be obtained by writing to Consumer Information Center, Dept. 628F, Pueblo, CO 81009.

NOTE: CONSUMER NEWS has just learned that HEW's Office of Facilities and Engineering has received many reports similar to the one reported above and has been referring them to the Federal Bureau of Investigation (FBI). FBI would like to hear from anyone who has been approached by these so-called government agents. FBI offices are also listed under "US Government" in telephone directory white pages.

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